the Anchal should not also be regulated by the same rules, in other words, whether the power taken should not be extended in respect of the Anchal also. We have not at present, the power to stop circulation through the Anchal. Recently we received an authoritative requisition to stop the circulation of a certain journal published in a foreign country. Under the existing law, we could not give effect to the requisition. It was this circumstance that mainly weighed with me when I suggested to Mr. Rajaram Row to embody in our Bill the two sections in question from the British Act. I have nothing to add to the observations of my friends on the other provisions of the Bill.

The Council having affirmed the principle of the Bill, Mr. Rajaram Row moved that the Bill be referred to a Select Committee consisting of Messrs. Nagam Aiya, Ferguson, Sivasubramonia Pillai and the Mover, to report within three months.

Seconded by Mr. Thanu Pillai.

Carried.

GUARDIAN AND WARDS BILL.

Mr. Kunhiraman Nair.—I beg to move that the Report of the Select Committee on the Bill for making provision for the care of the person and property of minors in Travancore be taken into consideration.

The report was presented to the Council more than a year ago, on the 1st September 1900, and the Bill itself has been before the public for more than three years. It has evoked no hostile criticsm from any quarter, and framed as it is on the lines of the British Indian Act VIII of 1890 relating to Guardian and Ward passed after a good deal of discussion by eminent British Indian statesmen and legislators, there is every guarantee of its having reproduced a well-considered and beneficial measure. A legislation of the sort modelled, as far as circumstances permit, on British laws, will I believe, be a real reform in the mode of administration of justice. The absence in our Statute Book of such a law, facilitating the protection and conservation of the property of minors who are incapable of taking care of such property, has been felt in many a case that has come up before our Courts, and a recent case decided by a Full Bench of the High Court—A. S. Nos. 45 and 133 of 1074 in which the minors of a Syrian Christian family, who inherited from their father property worth about Rs. 26,000, had to involve themselves in a prolonged litigation for recovering that property from their guardian and for compelling the guardian to render accounts of his management, and in which the Court costs amounted to nearly Rs. 6,000, that is, about one-fourth of the value of the whole estate—is fresh in my recollection. This prolonged litigation and the consequent heavy expenses could have been avoided, if such a law as now proposed had then existed. It is, however, needless at this stage to dilate upon the utility of the present legislation as the principle of this bill has been already affirmed by the Council. The British Indian Act, VIII of 1890, is the latest and fullest of the Indian Acts relating to guardians and it consolidates the law as contained in four previous Acts, Act 40 of 1858, Act 20 of 1864, Act 9 of 1881, and Act 13 of 1874, the latter relating exclusively to European British Subjects. This Council is incompetent by the terms of the Legislative Council Regulation of 1073, section 12, clause (*f*), to undertake legislation affecting European British Subjects, *the power of legislating for that community being vested under section 14 in His Highness the Maha Rajah alone.* There are very few minors of that class permanently settling in this State and there is, therefore, not the same necessity for legislation regarding them as there is in the case of other classes of people, and I shall have to submit presently for your consideration and acceptance amendments calculated to exclude minors being European British Subjects from the operation of the proposed Regulation. The legislation here must be confined to minors belonging to other communities who as permanent settlers are in need of the protection of the State, and in regard to these latter, I may say that the Bill has been so framed, that while its provisions afford sufficient safe-guards for the person and property of the minors, all undue interference with the social and domestic institutions of the people concerned is avoided. Section 4 is expressly intended to save the personal laws of the Hindus, Mahomedans, Christians and other sections of the communities in the matter of appointment of guardians, and that intention will be made clearer by the insertion of an Explanation, of which I have

LIBRARY ARCHIVES Kerala Legislative Assembly

given notice. Another feature of the Bill worth notice is that it does not compel any person interested in a minor and wishing to act as a *de facto* guardian to seek the aid of the Court before entering upon the management of minors' estates, and that the Courts are to act only when set in motion by those interested in the welfare of the minors and only in so far as to protect the interests of minors whenever their guardians act in a dishonest or wrongful way. The Select Committee's report will speak for itself. The Committee has made no amendments involving important principle except it be the amendments embodied in section 3A, which, however, is simply an extension of the principle of recognising testamentary guardians. Wills are now recognised in Travancore by express law, and gifts and settlements for the benefit of minors are very common. The bulk of the estates of the minors belonging to the Marumakkathayam community represent what is known as Makkathayam property, that is, property devised or gifted as provision for his children by the father who, under the Marumakkathayam law as it now stands, is not entitled to appoint a guardian for his children. The public feeling in Travancore among the Marumakkathayam community is, so far as I have been able to ascertain, in favour of conferring such power on the father who evinces an interest in his children by settling property for their benefit. A provision of the sort embodied in section 3A is simply an adaptation of the law to the altered circumstances and sentiments of the society.

The remaining alterations made by the Committee are sufficiently explained in the Report and call for no special remark.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section 1, Clause (2).

Mr. Thanu Pillai.—I beg to propose that the word 'and' be inserted after 'Travancore.' The amendment is purely verbal and hardly calls for any explanation.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section 2, clasne (6).

Mr. Thanu Pillai.—I beg to propose that the words "or with respect to any class of persons, for all or any of the purposes of this Regulation" at the end of the clause, be omitted. Appointments of the kind referred to in this phrase are not likely to arise in the circumstances of this country. Hence this amendment.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section 2, clause (7).

Mr. Kunhiraman Nair.—I beg to propose, for the reasons already stated, the omission of this clause, defining the expression "European British subject."

Seconded by Mr. Nagam Aiya.

Carried.

Sections 3 and 3A.

Mr. Kunhiraman Nair.—I beg to propose that section 3 be omitted and that section 3A be changed into section 3. The reason for this amendment is obvious viz., that the section deals with European British subjects. It is, therefore, unnecessary.

Seconded by Mr. Thanu Pillai.

Carried.

Section 4.

Mr. Kunhiraman Nair.—I beg to propose that the expression "In the case of of a minor who is not an European British subject" at the beginning of the section be omitted, and that the following be added as an Explanation to the section:

"*Explanation.*—A guardian cannot be appointed to the property of a minor who is a member of a joint family governed by the Mitakshara law or by the Marumakkathayam law, and possessed of no separate property."

LIBRARY ARCHIVES Kerala Legislative Assembly

This section is intended, as was clearly stated by the authors of the corresponding provisions of the British Act in their speeches in the Legislative Council of British India, to save the personal law of the Hindu and the Mahomedan in the matter of appointment of guardians; but notwithstanding this declaration, doubts have arisen as to the right of the managers of joint Hindu families to act as guardians of the interests of minors in the joint family estate and these doubts had to be settled by the decisions of the Courts. The explanation now proposed embodies the result of the decisions of the British Indian High Courts (vide 19 Cal. p. 301, and 19 Bom. p. 309) and is necessary to be inserted, in order to avoid room for doubts and make the matter clear. The manager of a joint Hindu family or the Karnavan of a Malabar Hindu Tarawad is, to all intents and purposes, the sole manager of the joint estates on behalf of all members including minors, and to introduce another person would paralyse the proper management of the joint estate, and tend to strife and disunion. There is, in fact, no scope for the introduction of a stranger when the property of a minor exists in no other shape than of an interest in undivided property of a joint family.

Seconded by Mr. Nagam Aiya.

Carried.

Section 6, Clause (d).

Mr. Thanu Pillai.—I beg to propose that clause (*d*) be omitted. This is necessary in consequence of the amendment adopted in section 2, clause (6).

Seconded by Mr. Nagam Aiya.

Carried.

Sections 8 and 10.

Mr. Thanu Pillai.—I beg to propose that the word 'and' be inserted after "application" in clause (*k*) of sub-section (1) to section 8, and the words "of the" between "any" and "property" in line 5 of sub-section 3, clause (*b*), to section 10. The amendments are purely verbal and the object is simply to supply certain omissions in the sections.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section 13.

Mr. Kunhiraman Nair.—My first amendment in this section is to omit clauses (2) and (3) which deal with European British subjects and number clause (4) as clause (2).

Seconded by Mr. Rajaram Row.

Carried.

Mr. Kunhiraman Nair.—I would next propose that the following be added as clause (3) and that clause (5) be numbered as clause (4).

"No person being the next legal heir of a ward or appearing to have a direct or indirect interest in the death or continued disqualification of such ward shall be appointed a guardian of the person of such ward, unless the Court is satisfied that it will be for the welfare of the minor to appoint such person as guardian."

This is a well-recognised principle and, I trust, it will commend itself to the Council without any special remarks from me.

Seconded by Mr. Thanu Pillai.

Carried.

Section 15.

Mr. Kunhiraman Nair.—I beg to propose the omission of clause 4 of this section as it deals with European British subjects.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Sections 16 and 21.

Mr. Kunhiraman Nair.—I would, for the sake of convenience, take these two sections together. My amendment is that the two sections should be omitted. These

LIBRARY ARCHIVES Kerala Legislative Assembly

sections have reference to the appointment of Division Peishcars as guardians who are to act, subject to the control of Government. There is, however, no provision in the Bill defining the powers of Government, or the powers, rights, duties and liabilities of Division Peishcars in the management of a minor's estate, and the management contemplated by the corresponding provisions of the British Act is evidently the management under such authority as the Court of Wards whose powers are defined by express legislation. There is no Court of Wards Regulation in force here, and the machinery of the State does not admit of the constitution of a Court of Wards, even if necessity exist, for the creation of such court. The existence of such necessity is doubtful. We have not, in Travancore, large zemindaries of the character of those existing in British India, and the scattered estates of the representatives of the few Edavagais and jenmies are subject to the joint family system, in which there is very little scope for the appointment of strangers as guardians. The Division Peishcars are already burdened with multifarious duties and any unnecessary addition to this work is to be deprecated. It seems hardly worth while to add to their work by their being appointed as guardians of minors owning properties of comparatively small values. The Division Peishcars have, no doubt, ample opportunities of knowing whether the interests of minors who own landed property, demand the assistance of the court to secure them from loss in the management of the property and this knowledge they may utilise by addressing the court in the manner indicated by sections 6, 7 and 8 for the appointment of a suitable guardian,—a proposal which will, I have no doubt, be treated with the great respect due to the Division Peishcar, but further than this, the Division Peishcars need not, in the circumstances of this State, be asked to do in the matter. If the Peishcars are to be appointed guardians, they will have to be subjected to the authority of the District Courts in the absence of a Court of Wards.

Seconded by Mr. Thanu Pillai.

Carried.

Section 17, clause (b).

Mr. Kunhiraman Nair.—I beg to propose that the words "subject to the provisions of this Regulation with respect to European British subjects" at the beginning of the clause be omitted, and the words "or karnavan" be inserted after 'father' in line 3. I have already given my reasons for the first part of my amendment, and in respect of the latter, I would say that it is only an omission which is now proposed to be supplied.

Seconded by Mr. Thanu Pillai.

Carried.

Section 19.

Mr. Kunhiraman Nair.—I beg to propose that this section be omitted. A minor is, by reason of immature age, incompetent generally to deal with property or enter into contracts and he cannot be recognised as manager of the family during his minority. In Marumakkathayam Tarawads, during the minority of the senior male member, the management of the family devolves upon the senior female who is of age and the recognition of the minor as 'manager of the family is opposed to principle.

Seconded by Mr. Thanu Pillai.

Carried.

Section 20, Clause (2).

Mr. Kunhiraman Nair.—I beg to propose that the words "Dewan with Our previous sanction" be substituted for "Government" in line 5. The amendment is purely verbal.

Seconded by Mr. Thanu Pillai.

Carried.

Section 22.

Mr. Sivasubramonia Pillai.—I beg to propose that the word 'safety' be inserted between 'his' and 'support' in line 4. The object of the amendment is to make the meaning clearer.

Seconded by Mr. Thanu Pillai.

Carried.

LIBRARY ARCHIVES Kerala Legislative Assembly

Sections 24, 27, 30, and 32.

Mr. Kunhiraman Nair.—My amendment in these sections is simply to omit the words "the Peishcar or is" in line 4 of section 24, "than a Peishcar, or" in lines 1 and 2 of section 27, and the words "and such guardian is not the Peishcar" in lines 4 and 5 of sections 30 and 32. I need only say that these amendments are consequential upon the omission of sections 16 and 21.

Seconded by Mr. Nagam Aiya.

Carried.

Mr. Thanu Pillai.—I beg to propose that the word "enure" be subsituted for "ensure" in line 9 of section 32. This is simply to correct a typographical error.

Seconded by Mr. Rajaram Row.

Carried.

Section 38, clause (2).

Mr. Kunhiraman Nair.—I beg to propose that the words "and if the guardian making the application is the Peishcar, and Our Government approves of his applying to be discharged, the Court shall in any case discharge him" be omitted. This amendment is rendered necessary by the omission of sections 16 and 21.

Seconded by Mr. Rajaram Row.

Carried.

Section 39 sub-section (1).

Mr. Sivasubramonia Pillai.—I beg to propose that the words "or karnavan" be added after the word "father" in lines 1, 3 and 4 of clause (*d*). The reasons for this amendment are obvious.

Seconded by Mr. Thanu Pillai.

Carried.

Section 41.

Mr. Kunhiraman Nair.—I beg to propose that sub-section (5) of this section be omitted. The omission of this sub-section is also consequential upon the omission of sections 16 and 21.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section 43, sub-section (3.)

Mr. Thanu Pillai.—I beg to propose that the sub-section be numbered as a separate section. This was put in by the Select Committee but as it provides for the realization of all fines imposed under the Regulation, it is better to treat it as a general section.

Seconded by Mr. Kunhiraman Nair.

Carried.

Section 44.

Mr. Thanu Pillai.—I beg to propose the omission of the words "the Peishcar or upon" in lines 1 and 2 of clause (1), and the words "the Peishcar or" and "as the case may be" in lines 2 and 3 of clause (2). This is necessary in view of the omission of sections 16 and 21 and the other consequential amendments already adopted.

Seconded by Mr. Kunhiraman Nair.

Carried.

Section 45, clause (g).

Mr. Kunhiraman Nair.—I beg to propose that the words 'or refusing to remove' be inserted after 'removing.' The reasons which led the Select Committee to amend clause (*e*) apply to this amendment as well. Persons may be aggrieved by

LIBRARY ARCHIVES Kerala Legislative Assembly

the refusal to remove the guardian as much as by his removal. It has been held in British India that the effect of the corresponding provisions of clause (*g*) and of section 46, as they now stand, is to allow no appeal from an order refusing to remove a guardian but it seems to me that the right of appeal should be given in such cases. (See 23 Cal. 201, 20 Bom. 667 and 20 All. 433.)

Seconded by Mr. Thanu Pillai.

Carried.

Section 48.

Mr. Kunhiraman Nair.—I beg to propose that the words "not being Peishcars" be omitted in line 2 of clause (*i*).

Seconded by Mr. Dharmaraja Iyer.

Carried.

Mr. Kunhiraman Nair.—I beg to move that the Bill as now amended be read again on a future day of which notice shall be given.

The motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT BILL.

Mr. Thanu Pillai.—I beg to present the Report of the Select Committee on this Bill and move that the Report and the amended Bill be published in the Gazette.

The motion was put and agreed to.

LEPERS BILL.

Mr. Thanu Pillai.—I beg to present the Report of the Select Committee on this Bill and move that the Report and the amended Bill be published in the Gazette.

The motion was put and agreed to.

The Council adjourned at 6-5 P. M.

K. KRISHNASWAMY RAO,
President.

LIBRARY ARCHIVES Kerala Legislative Assembly